

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Magnolia Power Project)	01-AFC-6
_____)	

BURBANK BUILDING LOBBY
164 WEST MAGNOLIA BOULEVARD
BURBANK, CALIFORNIA

TUESDAY, OCTOBER 29, 2002

1:34 p.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John Geesman, Commissioner, Presiding Committee
Member

HEARING OFFICER PRESENT

Susan Gefter, Hearing Officer

STAFF AND CONSULTANTS PRESENT

David F. Abelson, Senior Staff Counsel

James W. Reede, Jr., MPPA, Energy Facility Siting
Project Manager

APPLICANT

Scott Galati, Esq.
Grattan and Galati

Bruce Blowey, Licensing Manager
Magnolia Power Project

LOCAL GOVERNMENT AGENCIES

Ronald E. Davis, General Manager
City of Burbank Water & Power

John Theodore Yee, PE, Senior Air Quality Engineer
South Coast Air Quality Management District

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P R O C E E D I N G S

1:34 p.m.

PRESIDING COMMITTEE MEMBER GEESMAN: I'd

like to welcome everyone to our prehearing conference for the Magnolia Power Project. I'm John Geesman, one of the members of the California Energy Commission, and I'm the presiding member of the Committee of Commissioners considering this application.

This is a prehearing conference on the Southern California Public Power Authority or SCAPPA's application for certification of the Magnolia Power Project. The Energy Commission assigned a committee of two Commissioners to conduct the proceedings on this AFC.

I am the presiding member. I am stepping in for former Commissioner Bob Laurie, who was previously assigned to the case, and who left the Commission in July of this year. My colleague, Art Rosenfeld, is unable to join us today. I'm going to turn the conduct of this proceeding over to Susan Gefter, the hearing officer for the Committee.

But before doing that, I did want to thank the Burbank Department of Water and Power

1 for their hospitality in hosting us here today,
2 and for conducting a very informative site tour,
3 which we have just completed immediately before
4 commencing this proceeding.

5 Susan?

6 HEARING OFFICER GEFTER: Yes. We are
7 going to take introductions for the record first
8 before we begin, and we will start with Scott
9 Galati, attorney for the applicant.

10 APPLICANT ATTORNEY GALATI: Yes. My
11 name is Scott Galati, attorney for SCAPPA in the
12 Magnolia Power Project.

13 APPLICANT LICENSING MANAGER BLOWEY: And
14 I'm Bruce Blowey. I'm the licensing manager for
15 SCAPPA in the Magnolia Power Project, and if you'd
16 like, if we are at the right time, I can introduce
17 some of the others.

18 PRESIDING COMMITTEE MEMBER GEESMAN:
19 Yes.

20 APPLICANT LICENSING MANAGER BLOWEY:
21 Okay. I'd like to introduce Douglas Hahn, with
22 URS Corporation; Cindy Poire, also with URS; the
23 one who has made the arrangements today, back
24 there with Cameron, Stan Freudenberg, he's with
25 SCAPPA; and Ron Maxwell is with Biv and

1 +Associates.

2 Standing in the back we have Richard
3 Corbi. He's the chief financial officer for
4 Burbank Water and Power. Fred Fletcher, next to
5 him, is the assistant general manager for Burbank
6 Water and Power, in charge of the power part of
7 the business. We were driven by Chris Lewis,
8 there in the back, from the airport. Next to him
9 we have Mike Lemos, and in front of Mike we have
10 Eldon Cotton. He's a consultant for the Magnolia
11 Power Project.

12 In front of him, slightly to the right
13 is Ron Davis, general manager for Burbank Water
14 and Power. Let's see, is there anybody on our
15 part of the business? Oh, we have Kevin Wright
16 there from ENTRIX, but I think that concludes the
17 introductions I'd like to make.

18 HEARING OFFICER GEFTER: Thank you, and
19 in a moment we'll ask Mr. Davis to address us. I
20 understand you have a few comments for us, thank
21 you.

22 Next is staff, Mr. Abelson, staff
23 counsel?

24 SENIOR STAFF COUNSEL ABELSON: Thank
25 you, Ms. Gefter. My name is David Abelson. I'm

1 senior staff counsel for the staff on this
2 particular siting project, and to my left is James
3 Reede, project manager for the Magnolia Power
4 Plant siting case.

5 HEARING OFFICER GEFTER: We have one
6 intervenor in this case, and that is the
7 California Unions for Reliable Energy, or CURE.
8 They do not have an appearance here today and they
9 did not file a prehearing conference statement;
10 however, we would expect to hear from them in the
11 evidentiary hearing.

12 Representatives of agencies, of
13 governmental agencies, we understand there is
14 someone here from the South Coast Air District?
15 Could you come up to the podium and speak into the
16 microphone, please.

17 SENIOR AIR QUALITY ENGINEER YEE: Good
18 afternoon. My name is John Yee, and I'm with the
19 South Coast Air Quality Management District. I'm
20 also here with my staff engineer, John Dana.

21 HEARING OFFICER GEFTER: Thank you,
22 Mr. Yee. Thank you for being here today.

23 Also, is there anyone here from the City
24 of Burbank Planning Department?

25 The Energy Commission has a public

1 adviser also who, she is not here today but she
2 has been active in contacting members of the
3 public and the communities surrounding the Burbank
4 area, notifying them of the project and that we
5 are reviewing this project over the last year.

6 So also I understand the applicant has
7 engaged in many outreach efforts to contact the
8 community locally and in the surrounding
9 communities. So with that, if there are members
10 of the public here today who have any comments or
11 wish to address us or let us know that you're
12 here, you're welcome to come forward, please, to
13 the microphone and introduce yourself.

14 It doesn't seem that anyone is here
15 today from the public who wants to introduce
16 themselves; however, you are welcome to
17 participate and make public comment either at this
18 event or at the evidentiary hearing which we will
19 describe later in this proceeding.

20 I'm going to give a little background
21 for the record as to what we are doing here. On
22 September 25th, 2001 SCAPPA filed an AFC to build
23 the Magnolia Power Project on the existing site of
24 the Magnolia Power Station, which is owned and
25 operated by the Burbank Water and Power

1 Department, and that's why we're here today. And
2 at this point I think if Mr. Davis like to come
3 forward and tell us a little bit about Burbank
4 Water and Power and the proposal, please come up
5 to the mic.

6 GENERAL MANAGER DAVIS: Yes. Good
7 afternoon, Ms. Gefter, and Commissioner Geesman.

8 Ron Davis, general manager, Burbank
9 Water and Power. First, let me welcome you to
10 Burbank. Thank you for coming and taking the time
11 to see the site and talk with staff. That was
12 very much appreciated.

13 Just a few quick words and I'll let you
14 get on with it. I don't want to belabor things,
15 but I thought I might say just a couple of things
16 about why the project exists in the form it does,
17 how we came about that and what we're hoping for
18 at the end of this process, we hope is the end of
19 this process.

20 First of all, to tell you that this site
21 has been an active generating site for, like, 60
22 years. Burbank had, in fact, been looking at what
23 to do with its generation. Like many utilities,
24 it was deciding whether or not to wind down the
25 deregulation or re-power.

1 Early in 1999 staff took it to our city,
2 the question of what to do, and the city's
3 comments generally went along the lines of we
4 remember in '94 when the Northridge earthquake
5 happened. Everyone around our community was dark,
6 and in a few minutes Burbank was relit, and some
7 of the communities stayed dark for six years. And
8 they said please struggle with the question. See
9 if you can do something economic.

10 We did look, and what we came up with
11 was you could do economic cost-effective
12 generation in municipal sites inside urban areas,
13 but you had to build modern generation that was
14 competitive. What that really meant was large
15 units, not the small ones that cities could do on
16 their own, and, hence, the Magnolia application.

17 But in doing so, the cities had to give
18 up something they've always had, which is local
19 control. You uniquely do one on your own. And
20 that's what all the cities in Southern California
21 that do have generation have done previous to
22 Magnolia, at least with their local generation.
23 We had participated as members of SCAPPA and
24 otherwise in cold projects, nuclear projects,
25 transmission projects, but this is the first in-

1 basin, if you will, municipal power plant that we
2 have done jointly together through SCAPPA.

3 And without SCAPPA, frankly, it wouldn't
4 have been possible, because the unit is just too
5 large for one city to do. So we appreciate that,
6 but wanted to tell you that there is a little
7 background and history, and it just isn't obvious
8 for a city to build something a little bigger than
9 it needs, to do so with other cities on the hope
10 that later they'll build one and let you
11 participate in their back yard. That's an
12 evolution for us as municipal utilities, but we're
13 excited about this SCAPPA project, because it
14 allows us that opportunity.

15 In 2000 we had decided, as I mentioned,
16 about the type of facility, and we got together
17 with the other SCAPPA utilities to see what would
18 happen and started this application. It is our
19 desire to get certification, if possible, from
20 you, as early as possible in '03, so that we might
21 have a chance to start construction in June of
22 '03, with an idea of completion and service in the
23 summer of '05. That is our goal.

24 And, with that, I'll conclude my
25 comments and thank you for the opportunity.

1 HEARING OFFICER GEFTER: Thank you,
2 Mr. Davis. In terms of procedure, the application
3 was initially filed as a six-month process, but
4 upon agreement of the parties the project review
5 was converted to a 12-month process.

6 The staff filed its final staff
7 assessment on the case on October 3rd, 2002.
8 After that, we started moving more quickly and the
9 parties filed their prehearing conference
10 statements on October 23rd. As I mentioned
11 earlier, CURE did not file a prehearing conference
12 statement, but we did receive those from the
13 applicant and from the staff.

14 And both statements indicate there are
15 no disputed topics, and if the parties wish, they
16 can submit their testimony and documentary
17 evidence by declaration. And so with that in
18 mind, we are going to be talking about plans for
19 the evidentiary hearing, which is the last step of
20 the process.

21 Since there are no disputed issues, we
22 will allow testimony to be submitted by
23 declaration at the evidentiary hearings. What
24 that means is that it's not necessary for the
25 parties to sponsor a witness on every topic;

1 however, we would still require written testimony
2 from each witness with a declaration in writing
3 under penalty of perjury that that is their
4 testimony.

5 We also will allow parties an
6 opportunity to cross-examine witnesses if it
7 appears necessary; however, we would need notice
8 from the parties if they intend to cross-examine
9 the witness and we will set a deadline for that
10 request in enough time so that if a party needs to
11 cross-examine another witness, everyone would be
12 on the list of that.

13 We will ask the applicant, however, for
14 a witness on Project Description, and the reason
15 for this is to set a context for the entire
16 process. If we have a witness who can describe to
17 us the overview of the project and the essential
18 details of the project, then we can go forward and
19 put other pieces of the puzzle together. So, as
20 I've spoken to Mr. Galati earlier and have
21 indicated to the applicant, we would request a
22 witness on Project Description with a pretty
23 comprehensive description for us to set the
24 context for this case.

25 We may also identify additional topics

1 that we'll require like testimony as we proceed
2 today. I have indicated to Mr. Yee from the air
3 district that we would request either his presence
4 or another representative from the air district to
5 participate in the evidentiary hearing.

6 The purpose of today's prehearing
7 conference essentially is to determine whether the
8 parties are ready for evidentiary hearings, and to
9 discuss the procedures necessary to complete the
10 certification process. We would, in this regard,
11 direct the parties to present their positions on
12 the topic areas, and then we'll discuss a schedule
13 for the evidentiary hearing.

14 We also would like to hear from Mr. Yee
15 on your review of this project. I was also hoping
16 that someone from the City of Burbank would be
17 here to talk about a couple of questions I have
18 about land use, but what I have planned is I have
19 looked at the staff assessment and the AFC, and
20 have some areas that I would like to see addressed
21 prior to the evidentiary hearings. These
22 questions can be answered in writing, as part of
23 the prepared testimony of the parties' witnesses.

24 So, as we turn to the topic areas, I'll
25 identify the questions that I have for the

1 parties. And I would like to ask the applicant to
2 begin with your presentation on the status of your
3 views on topics.

4 APPLICANT ATTORNEY GALATI: Thank you,
5 Ms. Gefter, Commissioner Geesman.

6 We reviewed the final staff assessment
7 and are in agreement with each and every technical
8 area, including the conditions of certification.
9 We had one proposed clarification on a condition
10 of Traffic and Transportation that we communicated
11 to staff. We understand that there is an
12 agreement there and we will discuss with staff
13 whether or not we will make that minor change in
14 our testimony, so staff can agree to it, or we can
15 stipulate right on the record that change -- I'm
16 not sure how that procedure will work.

17 I propose that we would write a proposed
18 modification to that condition in our testimony,
19 and staff could place on the record agreement with
20 it.

21 HEARING OFFICER GEFTER: Yes. We would
22 prefer it in writing at the time that you file
23 your testimony.

24 APPLICANT ATTORNEY GALATI: Absolutely.

25 In addition, in all of the other areas

1 we are in agreement with the conditions of
2 certification and the conclusions reached by
3 staff.

4 HEARING OFFICER GEFTER: Mr. Abelson?

5 SENIOR STAFF COUNSEL ABELSON: Thank
6 you, Ms. Gefter, Commissioner Geesman.

7 I think everyone has stated quite
8 accurately that this case is basically ready for
9 hearings. There are no disputed issues at this
10 time. There are no topic areas that need to be
11 resolved save the one that Mr. Galati mentioned,
12 and I'll defer to Mr. Reede in just a moment to
13 clarify what that's about.

14 Because the case is undisputed, we are
15 prepared to have it submitted on record, and with
16 that I'd like to turn the matter over very briefly
17 to Mr. Reede to add any clarifications or
18 additions or to comment on Mr. Galati's comments.

19 ENERGY FACILITY SITING PROJECT MANAGER
20 REEDE: Good afternoon, Hearing Officer Gefter and
21 Commissioner Geesman.

22 My name is James Reede. I'm the Energy
23 Facility Siting Project manager assigned to the
24 proceeding, 01-AFC-6. Mr. Galati is referring to
25 a condition of certification of Transportation-5,

1 which relates to the timing of the requirement to
2 show us an agreement for the staging and laydown
3 area that is related to page 4.9-23. And
4 basically, he has asked for a change in the
5 verification.

6 Rather than it reading, "At least 60
7 days prior to the start of site mobilization, the
8 project owner shall reach an agreement with the
9 owner of the rail line for use of the line for the
10 purpose described," staff has agreed that for
11 clarification and timing purposes it would better
12 read, "At least 60 days prior to the use of the
13 existing rail line."

14 We feel that it is a common-sense type
15 of change, and most of our staff is willing to
16 accept the change once it was explained -- well,
17 our staff is willing to accept the change.

18 HEARING OFFICER GEFTER: Well, that
19 seems to be consistent with the language of the
20 condition.

21 ENERGY FACILITY SITING PROJECT MANAGER
22 REEDE: Correct.

23 HEARING OFFICER GEFTER: So you want to
24 change it to the use of the existing rail line,
25 rather than the start of site mobilization.

1 ENERGY FACILITY SITING PROJECT MANAGER

2 REEDE: Right.

3 HEARING OFFICER GEFTER: However, the
4 question becomes how do you know when 60 days
5 occur prior to the use of the rail line? Is there
6 some notification from the vendors that they would
7 be sending this by a certain time?

8 ENERGY FACILITY SITING PROJECT MANAGER

9 REEDE: Yes, and there are various requirements,
10 including a transportation management plan, which
11 they let the compliance project manager know,
12 through the schedule, when certain deliveries are
13 planned, or proposed.

14 For example, when the turbines are going
15 to be delivered it shows up in the schedule.
16 That's a particular milestone that the compliance
17 project managers usually are in attendance for.
18 And so they would have to have the property under
19 an agreement at least 60 days prior to that
20 turbine being delivered.

21 HEARING OFFICER GEFTER: Well, it seems
22 that the language of the verification could be
23 more specific, and perhaps the parties could get
24 together before the hearings and give me more
25 specific language which reflects what Mr. Reede

1 has just described as to what you had in mind.

2 Because the parties may understand what
3 you have in mind, but when you get to the actual
4 language of the condition, it may not be clear to
5 another reader.

6 And also, I'm questioning whether, when
7 you say prior to the start, or prior to the use of
8 the existing rail line, is this prior to the first
9 use of the existing rail line?

10 ENERGY FACILITY SITING PROJECT MANAGER

11 REEDE: Yes.

12 HEARING OFFICER GEFTER: So you might
13 want to put the word "first" in there.

14 And I also noticed that in several
15 conditions throughout staff's proposals, we may
16 have intended to use the words before the first
17 use or the first time something happens, and it
18 isn't there. So we may want to go through and
19 edit some of the conditions with respect to that
20 timing issue.

21 ENERGY FACILITY SITING PROJECT MANAGER

22 REEDE: Are you saying that staff may want to or
23 that you may want to?

24 HEARING OFFICER GEFTER: I may want to,
25 and then I would ask the parties if they are

1 interested.

2 ENERGY FACILITY SITING PROJECT MANAGER

3 REEDE: That's the Committee's prerogative.

4 HEARING OFFICER GEFTER: Right. So
5 we'll talk about that in the hearings.

6 ENERGY FACILITY SITING PROJECT MANAGER

7 REEDE: I might add, Hearing Officer Gefter, in
8 the General Conditions section, they now have a
9 glossary of various terms that were used, as far
10 as start of operation, things of that nature, so
11 that there is more clarity in determining when
12 we're saying something needs to be done.

13 HEARING OFFICER GEFTER: Well, I think
14 that's very useful, and, at the evidentiary
15 hearing, we will ask staff to explain the
16 information provided in that section on compliance
17 so that we have that in the evidentiary record and
18 can refer to it as we go through the decision.

19 ENERGY FACILITY SITING PROJECT MANAGER

20 REEDE: Wouldn't that be part of declaratory
21 testimony that we will be presenting?

22 SENIOR STAFF COUNSEL ABELSON: And it's
23 certainly part of our basic position, but what I
24 understand Ms. Gefter to be saying basically is
25 that she'd like a verbal statement about it on the

1 record.

2 ENERGY FACILITY SITING PROJECT MANAGER

3 REEDE: Okay.

4 HEARING OFFICER GEFTER: I would, and it
5 also helps us refer to that. Because I think it's
6 an important aspect of the General Conditions that
7 that is a change.

8 Are there any other issues between the
9 parties that you would like to discuss now?

10 APPLICANT ATTORNEY GALATI: I really
11 believe not, I just wanted to provide some
12 clarification on Trans-5, that my understanding,
13 and we'll work with staff towards this, is the
14 reason that there is a time line prior to use is
15 to show that we have the right to use it in enough
16 time for the Energy Commission staff member to
17 review that we do, in fact, have the right to use
18 it.

19 Sixty days is plenty of time, and I
20 think that it's put in there so as to not overload
21 staff with requests to use the rail line or
22 something else at the last minute.

23 So we'll continue to work with staff to
24 make that clear about the first use, and we'll
25 present it in our testimony and staff can state

1 for the record whether they will agree with it.
2 But we'll work with staff on clearing up that
3 language.

4 HEARING OFFICER GEFTER: Thank you.

5 Are there any other issues that you
6 wanted to discuss?

7 APPLICANT ATTORNEY GALATI: No, I agree
8 with Mr. Abelson and Mr. Reede, and I think we're
9 prepared for hearing and to proceed on
10 declaration. We will have a Project Description
11 witness available for the Committee's questions
12 and direct testimony and any cross-examination
13 from staff.

14 HEARING OFFICER GEFTER: Thank you.

15 I have some questions, as I referred to
16 earlier, that I would like to see addressed in the
17 written testimony. And the first question I have
18 is in Project Description, throughout the
19 information that was submitted, there was some
20 dispute as to whether it was three acres or four
21 acres, and now I understand it may be even a
22 larger acreage because of the zero liquid
23 discharge facility.

24 So when you make your presentation on
25 Project Description, be real specific to us about

1 the size of the site. Also, we need a description
2 of the SCAPPA umbrella in the seven cities that
3 are part of the consortium and the plan for sale
4 of power and the transmission of power to the
5 cities.

6 There was some information in the AFC,
7 but it was rather cursory, and at this point I
8 think you have a more highly developed idea and
9 plan of what the project has in mind. So we'd
10 like to see some of that information.

11 With respect to Air Quality, I had a
12 question, and this would go probably for Mr. Yee
13 and for staff, regarding the Air Quality
14 conditions, the way I read it in the staff
15 assessment, staff named the conditions and
16 compared them or correlated them with the
17 conditions that appear in the FDOC. I'm not clear
18 whether all the FDOC conditions are included in
19 staff's Air Quality section.

20 Mr. Reede?

21 ENERGY FACILITY SITING PROJECT MANAGER

22 REEDE: All of the Air Quality Management
23 conditions are considered LORS, and they are
24 placed into our conditions of certification
25 verbatim. We then add additional conditions of

1 certification related to construction or related
2 to CEQA issues which are above and beyond the Air
3 Quality Management District's laws, ordinances,
4 regulations, and standards.

5 HEARING OFFICER GEFTER: I have that,
6 and what I'm referring to is there is a chart
7 right before you get to the conditions in the FSA
8 which compares the staff numbering of the
9 conditions with the numbers contained in the FDOC.
10 And it didn't seem to include all the FDOC
11 numbers, and that was my question. Maybe I'm
12 misreading it.

13 Would you help me understand this chart.
14 It's at page 4.1-50.

15 Mr. Yee, do you have a copy of that?

16 ENERGY FACILITY SITING PROJECT MANAGER
17 REEDE: Ms. Gefter, my understanding is that all
18 of the conditions imposed by the district are
19 included. As I said, we add additional
20 conditions. Their numbering, or the Air Quality
21 District's numbering isn't sequential, depending
22 upon the particular type of equipment, the
23 emissions, they don't have sequential numbering.

24 And so that's why if you notice on the
25 Commission side, you don't see any places where it

1 says not applicable or not included. If you look
2 over on the district's side -- for example, in the
3 Construction conditions, AQC-1 through AQC-5, the
4 air district is silent if you look at the right-
5 hand side.

6 HEARING OFFICER GEFTER: Yes, I see
7 that.

8 ENERGY FACILITY SITING PROJECT MANAGER
9 REEDE: We impose conditions where they don't.

10 HEARING OFFICER GEFTER: Well, what I'd
11 like this to read is for staff to indicate in your
12 written testimony that the staff's proposed
13 conditions incorporate all of the additions that
14 are set forth in the FDOC. And also, if Mr. Yee
15 would confirm that at some point in the testimony
16 at the evidentiary hearing, that all of the
17 conditions that are contained in the FDOC are
18 incorporated in the FSA.

19 SENIOR AIR QUALITY ENGINEER YEE: Okay.
20 We can do that. It appears that, from the table,
21 it looks that way, but, of course, we will check
22 at the stage or at the evidentiary hearings to
23 make sure they're all there.

24 APPLICANT ATTORNEY GALATI: If I could
25 just break in for a minute to make sure, my

1 understanding is that the district's numbering
2 system isn't sequential. And I think that we
3 would love to know if the staff assessment needs
4 to be changed to include all the conditions of
5 certification before we get to evidentiary
6 hearing.

7 So if we could get maybe a few minutes
8 during the hearing, if you could check that all
9 these conditions are concerned, we would love to
10 know today, if possible. I think that they are.

11 SENIOR AIR QUALITY ENGINEER YEE: Yes, I
12 believe they are also. The only thing I did want
13 to say is that this past summer we did change our
14 program, so it's an alphanumeric condition
15 numbering system, so the condition numbers may
16 have changed since we originally issued the FDOC
17 to you.

18 ENERGY FACILITY SITING PROJECT MANAGER
19 REEDE: Yeah, but the FDOC that was issued had
20 these particular numbers in them, and staff has
21 included all district conditions and explains it,
22 and that's why we have this table 24. Because
23 there are so many district-proposed conditions, we
24 use the table, staff uses the table to ensure that
25 we've included all of them.

1 HEARING OFFICER GEFTER: Well, I
2 appreciate that and I think, you know, we all are
3 glad to hear that. I just want to have that in
4 the record when we get to the evidentiary hearing.
5 So, again, you know, with written testimony
6 submitted before the evidentiary hearing, we can
7 clear that up and make sure that that's the case.

8 SENIOR STAFF COUNSEL ABELSON:
9 Ms. Gefter, could I ask just for clarification so
10 I understand what it is you're needing? At the
11 very top of 4.1-50 is the sentence, the following
12 sentence, "Air Quality table 24 correlates the
13 district's proposed conditions from the revised
14 draft of the final determination of compliance."

15 If the wording is "correlates all the
16 district's proposed," would that satisfy your
17 needs?

18 HEARING OFFICER GEFTER: And actually,
19 it would be "and incorporates" --

20 SENIOR STAFF COUNSEL ABELSON: Yes,
21 fine.

22 HEARING OFFICER GEFTER: Okay. And I
23 have another question while we have Mr. Yee here.

24 SENIOR AIR QUALITY ENGINEER YEE: Yes?

25 HEARING OFFICER GEFTER: With respect to

1 the reclaimed trading credits for NOx that the
2 applicant has proposed to purchase to deal with
3 the offsets, are those real trading credits? Are
4 they available? Will they be long-term, will they
5 be permanent? And what -- I need some information
6 on that.

7 SENIOR AIR QUALITY ENGINEER YEE: Well,
8 for one, the credits are real. Two, they can
9 purchase what we call a stream of credits which
10 lapse -- our credits usually go from year to year
11 on a cycle one or cycle two. These are either
12 good for January to January or July through July,
13 depending on which cycle they purchase from.

14 But generally, the district requires
15 your compliance with reclaimed trading credits.
16 But if they do purchase a long stream of credits,
17 that would suffice also.

18 HEARING OFFICER GEFTER: Again, before
19 our evidentiary hearing if the parties -- in this
20 case the applicant -- could file information that
21 clarifies, again, the status of those reclaimed
22 trading credits and the -- whether they're year to
23 year or whether they're long-term or they're
24 permanent.

25 SENIOR AIR QUALITY ENGINEER YEE: The

1 requirement in the permanent only requires year-
2 to-year compliance.

3 HEARING OFFICER GEFTER: Again, this is
4 just clarification for the record, so that we know
5 what we're talking about and that when we get to a
6 compliance stage, the compliance project manager
7 knows what is expected and, of course, the air
8 district knows what we're working with too.

9 Then I have another question regarding,
10 this is staff's Air Quality condition C-3
11 regarding the diesel construction equipment
12 mitigation. I thought that this was -- I don't
13 know if this is a new standard condition that
14 staff is using in all cases, but in this case it
15 seems to require both the use of filters and also
16 the use of low-sulfur diesel fuel in mitigation.

17 And yet, it does also allow the
18 applicant not to use these mitigation measures
19 under certain circumstances. And even though it
20 lists those circumstances, it seems to be a pretty
21 broad list of exemptions. And I'm wondering how
22 effective this condition is, in fact, and we might
23 want to talk about that now, and then clarify it
24 for us at the evidentiary hearing, or we can talk
25 about it at the evidentiary hearing.

1 APPLICANT ATTORNEY GALATI: I will
2 address very briefly for you, these conditions
3 have been evolving at a very rapid rate over the
4 last year to two years based on, in my opinion,
5 based on problems with compliance. The very first
6 condition that I've ever seen was in the Sunrise
7 and the Elk Hills proceedings which required on-
8 site soot filters, which proved to be very
9 difficult to manage and difficult to install on
10 equipment.

11 So staff had worked closely with
12 applicants to allow certain circumstances where
13 soot filters could not work for a particular piece
14 of equipment. Also during that time, the
15 construction fleet, if you will, had been
16 continually being upgraded and updated such that
17 there weren't a lot of old pieces of equipment out
18 there that project applicants or the type size of
19 companies that would build upon a plan we
20 typically use.

21 As far as the effectiveness of the
22 mitigation, first and foremost, if you look at
23 number two on page 4.1-53 of the condition, you
24 will see that if you're an EPA CARB or EPA-
25 certified engine, you will be using ultra-low-

1 sulfur diesel fuel. So ultra-low-sulfur diesel
2 fuel will be used on the project.

3 It's a question of mitigation above and
4 beyond that that I think is where many of the outs
5 come to me. And they are based on what I think
6 applicants, engineers, and staff have learned in
7 the field of actually using soot filters.

8 The other thing that I would like to
9 point out is the oxide and soot filters are
10 primarily intended to mitigate PM 10 emissions.
11 And what we were concerned with here were other
12 pollutants which are taken care of, at least to
13 the extent feasible by ultra-low-sulfur diesel
14 fuel. And we'll explain that further.

15 HEARING OFFICER GEFTER: I would
16 appreciate that. I think we need that to enhance
17 the record, and also to guide our compliance staff
18 once this project goes to compliance if we adopt
19 this condition. So let's have that in the record,
20 an explanation of these mitigation options, and
21 also the exemptions. And why the parties agree to
22 these exemptions.

23 You can do that in writing or you can
24 have your witness --

25 APPLICANT ATTORNEY GALATI: We'll do the

1 best we can, but I think staff might have to weigh
2 in as to --

3 HEARING OFFICER GEFTER: I would expect
4 that staff would.

5 ENERGY FACILITY SITING PROJECT MANAGER
6 REEDE: Yes, I've already noted it.

7 APPLICANT ATTORNEY GALATI: And I would
8 also like to clarify, apparently I'm one page
9 behind in my version of the FSA, and I quoted
10 4.1-53, and for the record, it was 4.1-54.

11 HEARING OFFICER GEFTER: Thank you.
12 I also have a question with regard to
13 the proposed ERCs for the City of Southgate, or
14 from the Southgate area. Are you familiar with
15 those? Are those from the power plant that was
16 proposed there and has now been turned over to the
17 City of Burbank?

18 ENERGY FACILITY SITING PROJECT MANAGER
19 REEDE: I think I need to let the applicant answer
20 that specific question, because I am aware that
21 ERCs are traded all the time on the open market.

22 APPLICANT LICENSING MANAGER BLOWEY: I
23 don't remember the exact source, but I know it was
24 not the policy in that area, but I don't know if
25 Kevin remembers where it came from, but we

1 certainly can put that in our testimony.

2 HEARING OFFICER GEFTER: Okay, thank
3 you. That was just of interest to the Energy
4 Commission. We know that case well.

5 Mr. Yee, I don't have any more questions
6 for you at this point, but we are going to discuss
7 the schedule in a little while, so if you could
8 stay here for a little bit longer until we start
9 discussing the schedule for the evidentiary
10 hearing, I would appreciate that.

11 SENIOR AIR QUALITY ENGINEER YEE: Okay,
12 thank you.

13 HEARING OFFICER GEFTER: Thank you.

14 I have a couple of questions for the
15 parties on other topics.

16 ENERGY FACILITY SITING PROJECT MANAGER
17 REEDE: Excuse me, can I go back to Air Quality
18 for just a moment?

19 HEARING OFFICER GEFTER: Yes.

20 ENERGY FACILITY SITING PROJECT MANAGER
21 REEDE: Page 4.1-42, the paragraph under Adequacy
22 of Proposed Mitigation, where we're talking about
23 the applicant's proposed mitigation measures per
24 staff's additional proposed mitigation measures
25 and the district's proposed conditions as

1 recommended and conditions of certification AQC-1
2 through AQC-5, and AQ-1 through AQ-39 are
3 considered to be adequate to mitigate project
4 impacts and, thus, insignificant.

5 And you basically want an additional
6 statement to that.

7 HEARING OFFICER GEFTER: Yes,
8 clarification as we've discussed earlier.

9 ENERGY FACILITY SITING PROJECT MANAGER
10 REEDE: Okay.

11 HEARING OFFICER GEFTER: And with an eye
12 towards guiding the compliance staff with respect
13 to the conditions, the topic of Biology, there is
14 a discussion of stormwater discharge during
15 construction, and I think there is just a
16 reference in Biology to that. And then there is a
17 discussion of stormwater discharge in the Soil and
18 Water section.

19 And I think we need some sort of
20 discussion, probably under the Water section, on
21 stormwater discharge to the outfall. I understand
22 that there will be drains put into the site to
23 make sure that the stormwater can be drained, and
24 there will be a stormwater prevention plan,
25 stormwater pollution prevention plan?

1 APPLICANT ATTORNEY GALATI: Yes; in
2 fact, the draft has already been submitted to
3 staff as part of that.

4 HEARING OFFICER GEFTER: Okay.

5 APPLICANT ATTORNEY GALATI: We'll make
6 sure, one of our exhibits is our responses to
7 comments, and I believe that our draft stormwater
8 pollution prevention plan is an attachment to one
9 of those that explain that. So we can certainly
10 lift that out or at least reference it, and make
11 it clear we believe that.

12 In fact, stormwater was a topic area of
13 discussion at one of our workshops and we spent a
14 little bit of time on it. So I believe it's been
15 fully analyzed and we'll make sure it's clear if
16 it's not in the stormwater section.

17 HEARING OFFICER GEFTER: So you'll pull
18 the plan out as a separate exhibit with the
19 comments attached and we can look at that. And
20 your testimony perhaps, it will be the Soil and
21 Water testimony that would refer to that and
22 explain to us what the intention is, both for
23 construction and for operation.

24 APPLICANT ATTORNEY GALATI: Yes. We'll
25 do that.

1 HEARING OFFICER GEFTER: Okay. Because
2 there needs to be a plan both for construction and
3 operation that covers both areas.

4 APPLICANT ATTORNEY GALATI: Yes. I
5 believe that's correct, but I'll have to check to
6 make sure of that.

7 HEARING OFFICER GEFTER: Okay, fine.

8 And the other thing, in the Biology
9 section there is a lot of discussion of the
10 history of occurrences of sensitive species, and
11 the occurrences apparently were chronicled for the
12 past 100 years, but there didn't seem to be
13 anything in recent years. And I expect that's
14 because this is an industrialized developed site.

15 So I just wanted to point out, there was
16 a very interesting discussion in there about the
17 history of the site and how it's become
18 industrialized. And also, I guess, establishes
19 the point that there are no biological impacts, or
20 we'll talk about that at the hearing.

21 On Hazardous Materials, there was a
22 condition on Haz-5, I think it's at page 4.4-14,
23 and I had some question about the actual language
24 in that one, and again, the reason I'm bringing
25 this up now is so we can do it ahead of time

1 rather than at the hearing. It would be prepared
2 at the hearing.

3 On Haz-5, it's directing all vendors
4 delivering aqueous ammonia to use only "transport
5 vehicles which meet or exceed the specifications
6 of the DOT Code." And then it says "60 days prior
7 to receipt." And, again, this is language where I
8 would suggest that it should be "prior to first
9 receipt," or is it "prior to receipt every time"?

10 And is there going to be continuous
11 monitoring of the delivery trucks? And, again, it
12 would mean, you know, clarifying some of the
13 language here in the Commission --

14 (Construction noise heard.)

15 HEARING OFFICER GEFTER: We're going to
16 go off the record.

17 (Brief recess.)

18 HEARING OFFICER GEFTER: The other Haz
19 conditions also suggest, where it says at least
20 60, Haz-2, Haz-3, Haz-4, and Haz-5, the question
21 is whether in each of these verifications it's
22 prior to the first time of receiving hazardous
23 materials, or is this required every time, and
24 what kind of continuous monitoring is included in
25 the safety management plan to make sure that, in

1 fact, you have compliance every time there is a
2 delivery of hazardous materials. So what I would
3 like to see is more specific language in the
4 verifications.

5 The other topic I have a question about
6 is Noise, regarding the proposal to purchase the
7 residences on Moss Street and convert them to
8 industrial uses. That would be Noise-5, condition
9 five, and again, it's a question of when that will
10 occur and what kind of evidence is required to
11 ensure that that condition is enforced, and I'm
12 looking for page -- it's 4.6-4 for Noise-5.

13 ENERGY FACILITY SITING PROJECT MANAGER
14 REEDE: Noise-5? 4.6-13.

15 HEARING OFFICER GEFTER: Well, then I
16 have it written down wrong, thank you. Thank you,
17 you're right.

18 Okay, and it says the project manager
19 shall be responsible for converting the residences
20 to a conforming use of the industrial zone. And
21 then it just -- the verification is that the
22 project owner shall provide evidence that the
23 residences have been converted. I'm not sure
24 whether that's specific enough and what kind of
25 evidence you need and what kind of time line

1 you're talking about. So if we could get more
2 specific language there, it would be helpful.

3 APPLICANT ATTORNEY GALATI: To further
4 understand, Ms. Hearing Officer, this was also a
5 condition in which we had some discussions and
6 arrived at some mutually beneficial language, to
7 remove maybe a dispute of how noise would be
8 mottled. And one of the issues here is we agreed
9 that we would provide a letter identifying which
10 residences on Moss Street at the time, prior to
11 ground disturbance, are currently being used as
12 residences, again, the idea being that if they
13 were not being used as residences, then they were
14 not a sensitive receptor.

15 The second -- The other thing that we
16 could do is show that we have either an agreement
17 or an actual title has changed hands to show that
18 those -- use on. I'm trying to understand what
19 other kinds of evidence or what kinds of things we
20 need to provide so we can write a verification.

21 HEARING OFFICER GEFTER: If there is an
22 explanation in the text that tells us what options
23 there are, what alternatives there are, the
24 verification may not be necessary to include as
25 options in the verification, but I need some text

1 somewhere in the record so that we could use that
2 to set forth examples of what would be adequate
3 evidence.

4 APPLICANT ATTORNEY GALATI: Okay,
5 thanks. I think we can do that.

6 HEARING OFFICER GEFTER: Thank you.

7 And with respect to Land Use, I also did
8 have a question regarding the conditional use
9 permits that would be required for the laydown
10 area and the parking areas, and also for the stack
11 height variance, of the HRSO stack.

12 I did see a letter from the city which
13 indicates that they are in agreement with the
14 conditions, but this is a letter dated
15 October 22nd that was in our docket at the Energy
16 Commission; however, the letter is not specific as
17 to the CUP requirements. It doesn't really call
18 out those particular items that are described in
19 the land use section in the FSA.

20 And if we could get a more, a letter
21 that specifies those particular items, that would
22 probably even be more helpful to us, and we
23 wouldn't need to have a representative from City
24 of Burbank testifying on land use.

25 APPLICANT ATTORNEY GALATI: Okay. I

1 think we can describe that in our -- we can
2 probably accomplish that in one of two ways: one,
3 to get another letter from the city, or two, to
4 draft our testimony which would lay it all out and
5 have the city write a letter saying they agree
6 with our testimony, something like that.

7 Would both of those options work?

8 HEARING OFFICER GEFTER: As long as we
9 have something in writing from the city -- well,
10 here we have the city planner signing this --
11 somebody with authority who speaks for the City
12 Planning Department.

13 APPLICANT ATTORNEY GALATI: Absolutely.

14 ENERGY FACILITY SITING PROJECT MANAGER
15 REEDE: Excuse me, Ms. Gefter, you're referring
16 specifically to the information that's called out
17 on Land Use, page 4.5-10, under Conditional Use
18 Permit Findings?

19 HEARING OFFICER GEFTER: Yes.

20 ENERGY FACILITY SITING PROJECT MANAGER
21 REEDE: And so I'm just trying to clarify for the
22 applicant so that when I see the letter come in, I
23 either know if it's good or bad, they need to
24 comply with all of the findings that are called
25 out on 4.5-10 and 4.5-11.

1 HEARING OFFICER GEFTER: They need to
2 agree or let us know if they disagree what
3 conditions they would have required had they been
4 the permitting agency.

5 ENERGY FACILITY SITING PROJECT MANAGER
6 REEDE: Okay.

7 APPLICANT ATTORNEY GALATI: And I think
8 that our conversations with them have been that
9 they have agreed that staff identified and that
10 they agreed the conditions, I don't think their
11 letter maybe wasn't specific enough, and I think
12 we can certainly make it that way.

13 HEARING OFFICER GEFTER: The other thing
14 that, okay, I'm going to go on to another topic,
15 which is Public Health. In that section, the
16 staff assessment indicates that there are two
17 separate construction time frames. One talks
18 about four to six months to remove the existing
19 units, and another 23 months to build the Magnolia
20 Power Plant.

21 And I understand that that is
22 misleading, and that the construction period is
23 shorter, there would be some explanation. And
24 that could be in Project Description or you can
25 add that to the Public Health discussion, which is

1 to clarify a construction period. And then the
2 construction mitigation that we described earlier,
3 the low-sulfur diesel fuel and soot filters would
4 be in effect for the two years of construction
5 rather than two and a half years of construction.

6 APPLICANT LICENSING MANAGER BLOWEY:

7 Well, as you've heard earlier, we're hoping to get
8 the license hopefully January. That does drive
9 the start of the schedule, and it drives the
10 duration of the schedule because we want to be in
11 commercial operation by June of '05.

12 But this is a moving target, as far as
13 the duration of construction.

14 APPLICANT ATTORNEY GALATI: I also think
15 that -- and we'll provide that clarification in
16 our public health testimony, is that typically
17 what is done is some very conservative
18 assumptions, assuming overlap of some equipment
19 that creates the highest concentration of
20 emissions is used for the modeling. And we will
21 clarify, I believe that we in our modeling
22 submitted to staff, in the AFC or response to data
23 request, looked at those worst-case scenarios.

24 So I think we can point that out, and
25 maybe that will clarify it.

1 ENERGY FACILITY SITING PROJECT MANAGER

2 REEDE: Excuse me, Ms. Gefter. In going back to
3 the Land Use issue that we were talking about, as
4 far as conditional use permits, one of the things
5 that I did not see in Land Use that is contained
6 in the actual project description is there is
7 going to be approximately 100 parking spaces used
8 over by the zoned railroad site, which would
9 require a conditional use permit also.

10 And so that also needs to be addressed
11 in the letter that comes from the City of Burbank.

12 APPLICANT ATTORNEY GALATI: Okay, and
13 this is where I think we might have, we certainly
14 need some legal guidance. My understanding is,
15 first of all, there is no conditional use permit
16 required for this project or any of its pertinent
17 facilities that, my understanding, what you wanted
18 was but for the Energy Commission's exclusive
19 jurisdiction, the city would have issued a
20 conditional use permit under same or similar
21 conditions as you've imposed?

22 Or would have to impose different
23 conditions, and you would like those highlighted,
24 what conditions would they have imposed, or do
25 they think that the conditions of the Energy

1 Commission license now, as I expressed in the
2 final staff assessment, would result in compliance
3 with their conditional use permit ordinance, not
4 that we need a conditional use permit.

5 HEARING OFFICER GEFTER: That's right.

6 ENERGY FACILITY SITING PROJECT MANAGER

7 REEDE: But, you see, that point isn't brought out
8 relating to the railroad parking area and the land
9 use area, and that's another area that needs to be
10 addressed in the letter that's coming from the
11 City of Burbank. That was not one.

12 HEARING OFFICER GEFTER: There are
13 apparently two different parking areas that are
14 not zoned for parking use, and what staff has
15 analyzed in the existing LORS and designed
16 conditions that would cover what the city might
17 have done had they been issuing a CUP.

18 So we need the city to look at and
19 comment on all of those areas where they would
20 have issued a CUP, had they been the permitting
21 agency, and that includes that parking area by the
22 railroad tracks.

23 ENERGY FACILITY SITING PROJECT MANAGER

24 REEDE: Right.

25 HEARING OFFICER GEFTER: Right, that's

1 fine.

2 In Public Health, back to that again,
3 and you don't have your public health expert here,
4 typically staff looks at, in terms of analyzing
5 cancer risk, a 10-in-1,000,000 possibility, 10-in-
6 1,000,000 when you're looking at cancer risk. And
7 typically, staff will explain to us where they get
8 that standard from.

9 And in this particular FSA, that
10 standard isn't explained. Perhaps staff could
11 give us some sort of amplification on that in
12 writing in your submitted testimony, supplemental
13 testimony on Public Health.

14 And also, the FSA talks about
15 comparing -- This is in Cumulative Impacts --
16 comparing that 10-in-1,000,000 with the ambient
17 risk of 1,400-in-1,000,000. And, again, I need
18 some clarification on that. Where does that
19 number come from, and why does 1-in-1,000,000 not
20 contribute to a cumulative impact where the
21 ambient risk is 1,400-in-1,000,000.

22 And I'm sure that there is scientific
23 explanation for that, but I didn't see it in the
24 FSA section.

25 ENERGY FACILITY SITING PROJECT MANAGER

1 REEDE: That's no problem.

2 HEARING OFFICER GEFTER: Thank you. And
3 then we're going to move to Waste. In both Waste
4 and also in the Public Health section there is a
5 comment that says that the applicant conducted an
6 environmental site assessment of phase II ESA, and
7 in both the staff assessment both for Public
8 Health and Waste, they say that it was not
9 conducted according to standard ASTM procedures.

10 I'm questioning what is that about, what
11 does that mean and why, and whether that impacts
12 the analysis. And applicant, if you could address
13 that in your testimony, and explain to us why
14 staff is making that assertion and what that
15 means.

16 And also, with respect to proposed Waste
17 Condition 5, is it, talking about I guess as a
18 result of the phase II ESA, staff is proposing
19 Waste-5 in which it is requiring a project owner
20 to enter into a voluntary cleanup agreement with
21 the DTSC. And requiring a remedial action plan
22 and a lot of coordination with a lot of agencies.

23 And I am not sure that this condition is
24 able to be verified. It's very broad, it requires
25 a lot of coordination with a lot of agencies, and

1 it may not be a big deal, but it's not clear in
2 the record what is required as a result of the
3 phase II ESA. So I would like to see some
4 clarification on this topic.

5 ENERGY FACILITY SITING PROJECT MANAGER

6 REEDE: Might I interject, Ms. Gefter?

7 HEARING OFFICER GEFTER: Yes.

8 ENERGY FACILITY SITING PROJECT MANAGER

9 REEDE: When this particular issue came up, I
10 personally had conversations with DTSC and the
11 assigned project manager at that time. Our
12 compliance staff and our waste management
13 specialist have both already contacted DTSC.

14 And so in staff's opinion it's fairly
15 clear and laid out, from our perspective, what the
16 applicant has to do, when they have to do it, who
17 they have to do it with, and when they need to
18 report back to us.

19 HEARING OFFICER GEFTER: Can staff
20 provide information to the Committee?

21 ENERGY FACILITY SITING PROJECT MANAGER

22 REEDE: It's written down right now.

23 HEARING OFFICER GEFTER: Well, where?

24 In the condition itself?

25 ENERGY FACILITY SITING PROJECT MANAGER

1 REEDE: Yes, ma'am.

2 APPLICANT ATTORNEY GALATI: I think, if
3 I could maybe clarify, in the world of
4 investigation for materials that are either
5 impacted by hydrocarbons or other substances --
6 soil, water, and that area -- URS conducted a
7 phase I site assessment. It found that there was
8 potential that the site could be contaminated,
9 have some sort of impact.

10 They then conducted a limited phase II,
11 and it's one of these things that happens, it's
12 how much money do you spend investigating if you
13 already understand you have to remove and take
14 something out of the ground. So the limited phase
15 II didn't go farther, because it established that
16 there was going to have to be some sort of
17 remediation.

18 The next step is a remedial action plan
19 that must be coordinated with all of these
20 agencies. Unfortunately, it's burdensome and
21 difficult to manage the coordination, but there's
22 no way, to comply with LORS, you need to
23 coordinate with all of these agencies.

24 And so it was agreed that we would do
25 that remediation, and so staff included a

1 condition requiring us to actually go through the
2 step before requiring remediation, which is to
3 submit a remedial action plan, and coordinate with
4 the agencies who have jurisdiction over that
5 matter to make sure that that's done.

6 So I think that Waste-5 is -- we'll
7 certainly explain that a little clearer, but I
8 don't think we need to change anything in Waste-5,
9 because I think it does require us to coordinate
10 with all of those people, and unfortunately,
11 that's the law.

12 HEARING OFFICER GEFTER: What I need is
13 clarification and I'm not asking for a language
14 revision, but we need some text to explain what is
15 expected here. And, you know, Mr. Reede indicated
16 there is already a project manager assigned to
17 this case at DTSC. If that information is
18 submitted to us as part of your testimony that
19 would give us some basis for making a finding that
20 Waste-5 is sufficient and an adequate condition,
21 that's what I'm looking for.

22 It also -- The verification indicates
23 that the voluntary cleanup agreement must be filed
24 with DTSC no later than 30 days after
25 certification, and so a time line probably is in

1 place now. And if that could be included in the
2 testimony, that would be helpful to us.

3 APPLICANT ATTORNEY GALATI: And I will
4 be the first to admit that I didn't catch that 30
5 days after certification. Typically, these
6 agreements are entered into so many days prior to
7 actually conducting the work. Where it would be
8 the applicant's risk to the construction schedule
9 if they didn't proceed quickly, we would --

10 ENERGY FACILITY SITING PROJECT MANAGER
11 REEDE: Ms. Gefter, the main reason we put within
12 30 days after certification is because if you also
13 read into the condition of certification, we're
14 saying no site mobilization can take place. We're
15 saying you don't do anything until you give us
16 this, and it has to be within 30 days of
17 certification.

18 HEARING OFFICER GEFTER: Okay, and I see
19 that, and I have no problem with, as I said, the
20 language, if you give me a basis fro the condition
21 itself. Because in the record we have to have a
22 reason and basis to impose this particular
23 condition.

24 ENERGY FACILITY SITING PROJECT MANAGER
25 REEDE: Well, the basis for it was discussed in

1 the section that speaks to the phase II that was
2 performed --

3 HEARING OFFICER GEFTER: Okay, I
4 understand that, Mr. Reede, and, as I indicated
5 earlier, the FSA says that it was not conducted
6 according to standard ASTM procedures. It says
7 that here in Waste, and it says that also in
8 Public Health and I wanted some explanation for
9 that.

10 ENERGY FACILITY SITING PROJECT MANAGER
11 REEDE: And we concluded that based upon the
12 information that was contained that a real action
13 is necessary.

14 HEARING OFFICER GEFTER: Okay.

15 ENERGY FACILITY SITING PROJECT MANAGER
16 REEDE: We need it cleaned up before they turn
17 soil.

18 HEARING OFFICER GEFTER: And that's
19 fine, thank you. And I think Mr. Abelson, who is
20 nodding over there, understands that we need a
21 basis in explanation.

22 So an applicant carries the burden, so
23 applicant would submit to us the information, and
24 staff would review that and staff would respond if
25 the condition needs to be amended in any way or

1 explain to us why you continue to propose this
2 condition.

3 APPLICANT ATTORNEY GALATI: My only
4 comment would be that I offered you our opinion as
5 to why staff may have thought the phase II didn't
6 comply with the ASTM procedures. But, quite
7 frankly, once we agreed to remediate and go
8 through this process, we've never inquired as to
9 why they don't like the phase II.

10 So we need to get some information from
11 them as to why the phase II doesn't comply. And
12 personally, we think it doesn't need to comply for
13 anything the Energy Commission is doing. What the
14 Energy Commission needs to do is to recognize that
15 there needs to be remediation, which we have
16 agreed to do which will comply with the law.

17 HEARING OFFICER GEFTER: That would be
18 fine.

19 APPLICANT ATTORNEY GALATI: So maybe
20 that could just be taken out, whether it complies
21 with ASTM procedures or not. Because I believe
22 it's irrelevant.

23 HEARING OFFICER GEFTER: Okay. Well,
24 you have time to work with staff on explaining
25 that to the Committee.

1 And then at this point I am going to
2 move on to discussing the schedule for the
3 evidentiary hearing; however, at this point I also
4 would like to invite any other local agency or
5 member of the public to come forward if you feel
6 like doing it at this point. If you have any
7 comments or you would like to make a statement to
8 us, here is an opportunity.

9 Anybody? I know Mr. Reede has another
10 comment, so we'll turn to Mr. Reede.

11 Oh, okay. Mr. Reede is telling me that
12 people can't hear me because I wasn't speaking
13 into the microphone. I was going to at this point
14 invite members of the community, members of the
15 public, representatives of other governmental
16 agencies. If you'd like to come forward and offer
17 some comments to us at this time on the project,
18 you are welcome to address us.

19 Next on our agenda is to discuss the
20 schedule for evidentiary hearings. The
21 evidentiary hearing is part of the review process.
22 It's the point at which the record is submitted to
23 the Committee for review. The decision is based
24 on the evidence submitted at the evidentiary
25 hearings, and that is the totality of the record.

1 And it's important that we go through
2 that process and clear up any ambiguities at that
3 time, because after that the Committee then goes
4 into deliberations and produces a proposed
5 decision.

6 At this point we have talked to the
7 parties off the record about a good time for the
8 hearing, and everyone is in agreement that
9 November 18th will be the date, unless anyone has
10 any concerns, objections or cannot participate on
11 November 18th, and that is a Monday.

12 And the next part of that question is
13 where will we have the hearing. And we have the
14 option of having the hearing here, as we're doing
15 this afternoon, or we can have it in Sacramento at
16 the Commission office, and provide a
17 teleconference toll-free phone number for people
18 to call if you can't travel to Sacramento. And so
19 we would like to discuss the location at this
20 point for the hearing.

21 Mr. Galati?

22 APPLICANT ATTORNEY GALATI: We will
23 accommodate either of those choices. We would
24 like to make it as easy on the Commission as
25 possible.

1 We believe since we are going to be able
2 to submit by declaration, we will not need to
3 bring many, many witnesses with us, so we would be
4 fine to have it either in Sacramento, or we could
5 accommodate here in Burbank. So I guess I would
6 leave it up to staff for their preference, and if
7 Sacramento is their preference, we can do that.

8 SENIOR STAFF COUNSEL ABELSON: I think
9 we're obviously open to whatever the Committee
10 orders or requests; however, to the extent that
11 staff is needed for clarification, there obviously
12 are some cost savings to the state and some
13 efficiencies.

14 Also, I would note this particular
15 proceeding, because of the noncontroversial nature
16 of it, might be not an unreasonable one to hold in
17 Sacramento if the Committee is so disposed.

18 HEARING OFFICER GEFTER: In terms of
19 witnesses, the person that I would like to
20 participate is Mr. Yee or a representative from
21 the air district when we get to the topic of Air
22 Quality, and I would like to ask Mr. Yee whether,
23 if we have the hearing up in Sacramento, would he
24 be able to participate, either in person or by
25 telephone, or ask another representative from the

1 air district to participate if he is unavailable.

2 Mr. Yee is now coming up to the
3 microphone.

4 SENIOR AIR QUALITY ENGINEER YEE: Okay.
5 I believe you summarized what we talked about
6 earlier. The air district will be available on
7 November 18th, either in person or through a
8 teleconference.

9 HEARING OFFICER GEFTER: Thank you.

10 Having consulting with the Committee,
11 the presiding member here, we would like to
12 conduct the hearing up in Sacramento, and there
13 will be a teleconference. A toll-free phone
14 number will be available and that will be on the
15 notice of the hearing. Members of the public,
16 governmental agencies could call us if you are
17 unavailable to attend in person.

18 And the notice of the evidentiary
19 hearing will be out probably by the end of this
20 week, and it will set some deadlines for the
21 filing of testimony and for the submission of
22 exhibits. And also, we could discuss a briefing
23 schedule at this point, and I could include that
24 in the notice of the hearing, so that everyone
25 will then have a head start in terms of briefing

1 schedule.

2 Mr. Galati, do you have a proposal on
3 the briefing schedule?

4 APPLICANT ATTORNEY GALATI: Well,
5 representing an applicant who would really like to
6 get their license, we would propose a very
7 aggressive briefing schedule, since we believe
8 that the hearing officer is already very familiar
9 with the project and has questions that she wants
10 answered, hopefully by pointing directly to the
11 testimony. The briefs should not need to be
12 lengthy.

13 We would propose to help with the
14 project description writing in the form of a
15 brief, and to point those out in the form of a
16 brief. We think that we could probably submit our
17 brief by the end of the week after evidentiary
18 hearing.

19 We wouldn't hold staff to the same, but
20 we have the burden of proof and we would like to
21 get the PMPD out this year so that we can get to
22 licensing in January if possible.

23 ENERGY FACILITY SITING PROJECT MANAGER
24 REEDE: Excuse me, you said a week after the
25 evidentiary hearing or the week after the

1 prehearing conference?

2 APPLICANT ATTORNEY GALATI: No, we're
3 talking about the brief after evidentiary hearing.
4 We think we can get that by Friday. If the
5 hearing is the 18th, we think we can put our brief
6 together by Friday.

7 PRESIDING COMMITTEE MEMBER GEESMAN: You
8 mean Friday, the 22nd?

9 APPLICANT ATTORNEY GALATI: Correct.

10 HEARING OFFICER GEFTER: Okay.

11 APPLICANT ATTORNEY GALATI: What I'm
12 trying to impart is we'll do whatever we can to
13 get our license as quick as we can.

14 SENIOR STAFF COUNSEL ABELSON: I guess I
15 have two comments I'd like to make. First of all,
16 let me just back up one step in the sequence of
17 events.

18 I heard, Ms. Gefter, you asked for
19 several additional pieces of basically evidentiary
20 information which primarily although not
21 exclusively is going to be the applicant's
22 responsibility to compile in the form of written
23 testimony, project description, and so on.

24 I would like to ask, on behalf of staff,
25 that that be provided to the staff through your

1 scheduling order, if possible, no later than the
2 11th, Monday the 11th, which is a week in advance
3 of the hearings. And would request if possible
4 that staff be granted four days, to the 15th which
5 is a Friday, to file any response it may need to
6 file to that.

7 I don't anticipate lengthy comments on
8 staff's behalf. I have heard the nature of the
9 questions that you're asking. Still, without
10 having seen what Mr. Galati will prepare, we would
11 like to reserve a few days to be able to respond
12 to it, if necessary.

13 HEARING OFFICER GEFTER: Mr. Galati,
14 would that be feasible for applicant to provide
15 the answers to the questions by November 11th?

16 APPLICANT ATTORNEY GALATI: Yes.

17 HEARING OFFICER GEFTER: Very good.
18 Okay, I think that is a very reasonable schedule,
19 Mr. Abelson.

20 SENIOR STAFF COUNSEL ABELSON: With
21 regard to the briefing issue, obviously the
22 opening briefs, were you contemplating concurrent
23 opening briefs, Ms. Gefter?

24 HEARING OFFICER GEFTER: Not
25 necessarily. I think a response brief would

1 probably be fine from staff.

2 SENIOR STAFF COUNSEL ABELSON: If it's
3 not concurrent, then I have obviously no problem
4 with Mr. Galati's expedited request as that will
5 be entirely on his shoulders.

6 I would like to request -- I'm sorry,
7 could you state again the date you were proposing
8 for the brief?

9 APPLICANT ATTORNEY GALATI: Friday,
10 November 22nd, by close of business.

11 SENIOR STAFF COUNSEL ABELSON: And I
12 don't have my calendar in front of me, but I have
13 a feeling the following week is Thanksgiving week.

14 HEARING OFFICER GEFTER: That's correct.

15 SENIOR STAFF COUNSEL ABELSON: So I'm
16 thinking that perhaps by no later than Tuesday,
17 the week -- so it would be Tuesday, the week
18 following Thanksgiving, staff would have its
19 paperwork in.

20 We will certainly -- If there is little
21 to say, we will not take advantage of that full
22 time request, we will file sooner, but again, not
23 knowing how the proceeding is going to go and
24 since you're preparing a scheduling order, I'd
25 like to at least reserve that much time for staff

1 to respond.

2 HEARING OFFICER GEFTER: Yes. And how I
3 would characterize the briefing is that applicant
4 would file its opening brief by Friday,
5 November 22nd, and then staff would file a reply
6 brief by Tuesday after Thanksgiving, and I don't
7 know the date offhand either, and I would expect a
8 reply brief would most likely be a lot shorter
9 than the opening brief.

10 SENIOR STAFF COUNSEL ABELSON: Yes. And
11 again, I would offer, and with all sincerity, but
12 if we are able to generate that brief before the
13 Thanksgiving holiday, given the nature of what's
14 filed, we would certainly attempt to do that, but
15 we need to reserve those few days additional.

16 HEARING OFFICER GEFTER: Okay. Now,
17 also in your proposal that applicant would submit
18 its information that I requested to staff and to
19 the Committee by November 11th and that staff
20 would file a response by November 15th, and that
21 November 15th date will have to be a locked-in
22 date because we are going to need to review all of
23 that before the hearing on November 18th, which is
24 a Monday.

25 SENIOR STAFF COUNSEL ABELSON: I'm

1 sorry, will need to be --

2 HEARING OFFICER GEFTER: It needs to be
3 a lock-in; in other words, there won't be an
4 extension of time.

5 SENIOR STAFF COUNSEL ABELSON: Yes, I
6 understand that, sure.

7 ENERGY FACILITY SITING PROJECT MANAGER
8 REEDE: Excuse me, Ms. Gefter?

9 HEARING OFFICER GEFTER: Yes?

10 ENERGY FACILITY SITING PROJECT MANAGER
11 REEDE: November the 11th is a state holiday.

12 HEARING OFFICER GEFTER: Is that
13 correct? Is it --

14 ENERGY FACILITY SITING PROJECT MANAGER
15 REEDE: It's Veteran's Day.

16 HEARING OFFICER GEFTER: Oh, is that
17 right? Okay, what day is that --

18 ENERGY FACILITY SITING PROJECT MANAGER
19 REEDE: The docket unit will be closed on Monday,
20 November the 11th.

21 HEARING OFFICER GEFTER: You're right.
22 So we'll make it November 12th.

23 ENERGY FACILITY SITING PROJECT MANAGER
24 REEDE: No, if you would please make it November
25 the 8th.

1 APPLICANT ATTORNEY GALATI: Okay. If I
2 could step up to the plate here, applicant is
3 going to take all the burden of proof in this non-
4 disputed case, if staff can reply to applicant's
5 wonderfully prepared brief in three days instead
6 of four days. And so I would ask for them to give
7 me the day, give me the 12th, because, quite
8 frankly, I'll be working on the 11th, you're the
9 one taking it off.

10 So on the 15th, I want -- I gave you
11 four days on the staff assessment.

12 HEARING OFFICER GEFTER: If Mr. Galati
13 would have had it ready by November 11th anyway,
14 you can file it early on November 12th, and our
15 docket unit will be open that day.

16 SENIOR STAFF COUNSEL ABELSON: That
17 would be helpful. If we could get it in the
18 morning hours of the 12th, that would be
19 appreciated.

20 HEARING OFFICER GEFTER: All right. So
21 we will require it on November 12th by noon, and
22 then staff would see it that afternoon?

23 APPLICANT ATTORNEY GALATI: That's
24 agreed.

25 HEARING OFFICER GEFTER: Okay. And then

1 staff would file their response by close of
2 business on November 15th.

3 SENIOR STAFF COUNSEL ABELSON: Okay,
4 agreed.

5 HEARING OFFICER GEFTER: Okay. At this
6 point are there any other questions or comments on
7 the schedule? I'll give everyone a moment to
8 think of something.

9 APPLICANT ATTORNEY GALATI: Of course, I
10 have a comment on the schedule. If the briefs are
11 received on Tuesday, December 3rd, can the
12 Committee get the presiding member's proposed
13 decision out by the end of the year such that we
14 could have a January license date?

15 That's going to be one of the things
16 we're really struggling with.

17 HEARING OFFICER GEFTER: I understand
18 that. As we discussed off the record prior to
19 this hearing, we were looking at a PMPD to be
20 issued in January. And I cannot give you any kind
21 of promise that a PMPD will come out before the
22 end of the year. We will work diligently, but I
23 cannot assure that. We have other cases that
24 we're working on.

25 APPLICANT ATTORNEY GALATI: We will do

1 our best that our opening brief is something that
2 can be used to help the PMPD be prepared quickly.

3 HEARING OFFICER GEFTER: Any other
4 comments or questions?

5 Anyone in the audience?

6 The hearing is adjourned.

7 (Thereupon, the prehearing conference
8 was adjourned at 2:50 p.m.)

9 --oOo--

10 *****

11 *****

12 *****

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission public prehearing conference;
that it was thereafter transcribed into
typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
prehearing conference, nor in any way interested
in outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set
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